THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.14184 of 1998

DATED: 31.07.2007

Between:

Donda Sateesh Kumar & others .. Petitioner

And

The Eluru Municipality, Eluru,
W.G.District, rep. by its Commissioner
and another. .. Respondents

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.14184 of 1998

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in seeking to evict the petitioners from Plot Nos.1,3,6,7,8,13,14,15,16,21 and 22 in Y.M.H.A. Hall Road, opposite to N.S.Vegetable Market, Eluru, by invoking the provisions of Section 194(1) of the A.P.Municipalities Act, 1965 (for short, 'the Act'), as arbitrary and illegal, and consequently direct the respondents to renew the leases for the said plots in favour of petitioners 1,3,5,7,9,11,13,15,17,18 and 20.

In the affidavit filed in support of the writ petition, the petitioners contend that, originally the father of petitioner No.1 and petitioners 3,5,7,9,11,13,15,17,18 and 20 were selling vegetables in Old Vegetable Market area, but subsequently, on persuasion of the Municipal Commissioner, the father of petitioner No.1 and other vegetable vendors numbering 22 shifted their business to N.S.Vegetable market, a new Vegetable Market opened on 17.02.1964. Initially, the land was leased out on ground rent basis for five years and the allottees have raised super structures with their own funds and they have been doing their respective businesses, for which, they have been paying the lease amount and house tax regularly.

Further, it is the case of the petitioners that due to slackness in

vegetable business, some of the lessees have taken partners in their businesses with the knowledge of the Municipality, which has been collecting licence fee from the partners, and that itself shows the consent of the Municipality. The Municipality has been enhancing the ground rent from time to time and the lease period was being renewed.

The petitioners also submit that the lease period for all the plots under lease expired by 31.03.1998, as such, the Commissioner has issued notices in ROC.No.A1.No.2078/97 dated 20.02.1998 to all the lessees under Rule 12 of the Regulation of Receipt and Expenditure Rules, 1968 stating that the lease expires on 31.3.1998 and if the lessees want to continue the lease, they shall exercise their option in writing and in such case their options will be considered and the lease will be renewed and if the lessees who do not choose to continue the lease of the premises by exercising options, they have to surrender the plot to the Revenue Inspector on 31.03.1998. Pursuant to the notices, the petitioners have exercised their options willing to continue the leases on an enhanced lease amount of 33 1/3% on the existing lease amount. Thereafter, the Muncipal Council in its meeting held on 30.04.1998 has decided to cancel the leases of the petitioners.

The main grievance of the petitioners is that they have filed suits on 06.05.1998 and 08.05.1998 on the file of Junior Civil Judge, Eluru for permanent injunction restraining the first respondent from interfering with their possession, and the Hon'ble Court has granted *status quo* order in O.S.No.322 of 1998 filed by the third and fourth petitioners and in the other suit, notice was ordered. Having received the notices in the suits, the Municipality issued notices to the petitioners in ROC.No.1504/98/A1 dated 06.05.1998 stating that the plots which were sublet without permission of the Municipality will be taken possession and hence the lessees and the sub-lessees under Section

194(1) of the Act have to deliver the plots within 30 days from the date of receipt of the notice to the Revenue Inspector. On receiving such notices, the petitioners have sent a reply to the Municipality on 13.05.1998 and also paid the lease amount for the month of April and May by pay order. The petitioners further contend that out of 22 plots, 16 persons/lessees have taken outsiders into their businesses for the last over 15 years and the Municipality has been collecting taxes. Further, out of 16 plots, lease granted in respect of 11 plots are alone sought to be disturbed and no reason is given for discriminating the other five persons. Hence, this writ petition is filed.

Heard both the counsel.

Evidently, Interim orders are passed by this Court on 1st day of July, 1999 in WVMP.No.3331 of 1998 in WPMP.No.17066 of 1998 in W.P.No.14184 of 1998, wherein the petitioners were directed to make a fresh application for providing them shops in the proposed new shopping complex at the prevailing lease amounts that are fetching to the Municipality in the locality under IDSMT Scheme within two weeks from the date of receipt of a copy of that order and upon receipt of such an application, the respondents were directed to consider the petitioners applications and pass appropriate orders within eight weeks thereafter. In view of the said interim orders passed on 01.07.1999, no further orders are required to be passed in this Writ petition.

Subject to the above observations, this writ petition is closed.

(GOPALA KRISHNA TAMADA,J)

Dt.31.07.2007
v v